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6 **FEDERAL FACILITY COMPLIANCE AGREEMENT**
7 **BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY**
8 **AND THE U.S. FISH AND WILDLIFE SERVICE**
9 **AND THE U.S. ARMY CORPS OF ENGINEERS**

10 **SCOPE AND PURPOSE**

11 1. The express purpose of the undersigned Parties in entering into this Federal
12 Facility Compliance Agreement ("Agreement") is to address the Notice of Violation Cold Water
13 Aquaculture NPDES Permit No. IDG131003, dated December 11, 2008; the Notice of
14 Continuing Noncompliance, dated February 9, 2011; and, to further the goals of the Clean Water
15 Act ("CWA"), specifically Sections 101, 301, 313, and 402 of the CWA, 33 U.S.C. §§ 1251,
16 1311, 1323, and 1342.

17 2. It is the objective of all provisions and obligations of this Agreement to cause the
18 Dworshak National Fish Hatchery ("Facility") to come into full compliance with the Clean
19 Water Act, 33 U.S.C. § 1251 *et seq.*

20 **JURISDICTION**

21 3. The U.S. Environmental Protection Agency ("EPA"), U.S. Fish and Wildlife
22 Service ("USFWS"), and U.S. Army Corps of Engineers ("Corps") enter into this Agreement
23 pursuant to Section 313 of the CWA, 33 U.S.C. § 1323, and Executive Order 12088.

24 **PARTIES**

25 4. The Parties to this Agreement are EPA, USFWS, and the Corps.

1 5. The undersigned representative of each Party to this Agreement certifies that
2 he/she is fully authorized by each Party who he/she represents to enter into the terms and
3 conditions of this Agreement and to execute and legally bind that Party to it.

4 6. USFWS' and the Corps' officers, agents, contractors, servants, employees,
5 successors, assigns, and all persons, departments, agencies, firms, and corporations in active
6 concert or participation with them will take all necessary steps to ensure compliance with
7 provisions of this Agreement.

8 7. As long as this Agreement is in effect, USFWS and/or the Corps shall give
9 written notice of this Agreement to any prospective successor in interest and EPA, at least ninety
10 (90) calendar days prior to transfer of ownership or operation of the Facility. USFWS and/or the
11 Corps shall give written notice of such transfer or change in ownership or operation to EPA at
12 the address given below.

13 8. In any action to enforce this Agreement, USFWS and/or the Corps shall not raise
14 as a defense the failure of any of its officers, agents, contractors, servants, employees,
15 successors, assigns, or any persons, departments, agencies, firms or corporations in active
16 concert or participation with them, to take any action necessary to comply with this Agreement,
17 except as providing in Paragraphs 49 and 56.

18 **STATUTORY AND REGULATORY BACKGROUND**

19 9. For purposes of this Agreement, paragraphs 9 to 27 constitute a summary of the
20 statutory and regulatory background as well as the findings upon which this Agreement is based.
21 The facts related herein shall not be considered admissions by any Party. Paragraphs 9 to 27
22 contain findings of fact determined solely by the Parties and shall not be used by any person
23 related or unrelated to this Agreement for purposes other than determining the basis of this
24 Agreement.

1 10. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any
2 pollutant by any person” except in accordance with other specified sections of the CWA,
3 including Section 402, 33 U.S.C. § 1342.

4 11. CWA Section 402(a), 33 U.S.C. § 1342(a), provides that the Administrator of
5 EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”)
6 program for the discharge of any pollutant into the waters of the United States upon such specific
7 terms and conditions as the Administrator may prescribe. Each violation of an NPDES permit,
8 and each discharge of a pollutant that is not authorized by an NPDES permit, constitutes a
9 violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

10 12. The Corps is the owner of the Facility. The USFWS is identified as the operator
11 of the Facility in the most recent Notice of Intent for permit coverage, dated November 23, 2008.
12 The USFWS and the Nez Perce Tribe (“Tribe”) co-manage the Facility pursuant to the Snake
13 River Water Rights Act of 2004 (Public Law 108-447), Section I.E. of the Mediators Term Sheet
14 as ratified by Congress, and the subsequent Collaborative Management Agreement between the
15 Corps, USFWS, and the Nez Perce Tribe, dated December 2009.

16 13. The Facility is located in Clearwater County near Orofino, Idaho. The Facility is
17 a fish hatchery that raises primarily steelhead and salmon.

18 14. As the operator of the Facility, USFWS obtained NPDES permit coverage for the
19 Facility pursuant to the CWA.

20 15. Prior to December 1, 2007, USFWS was authorized to discharge effluent from the
21 Facility pursuant to NPDES Permit No. ID0021512 (“Expired Permit”).

22 16. Since December 1, 2007, USFWS has been authorized to discharge effluent from
23 the Facility pursuant to the General NPDES Permit for Cold Water Aquaculture Facilities in
24 Idaho (“Current Permit”). The Facility was given NPDES Tracking No. IDG131003.

17. The Facility, which was under USFWS's control at all times relevant to this Agreement, discharges effluent containing pollutants from various outfalls at the Facility into the North Fork of the Clearwater River and the Clearwater River.

18. The North Fork of the Clearwater River and the Clearwater River are “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are “waters of the United States” as defined in 40 C.F.R. § 122.2.

FINDINGS

19. Since December 2007, when EPA authorized coverage of the Facility under the Current Permit, the Facility has been corresponding with EPA. Specifically, USFWS expressed concern about complying with Sections II.B.2.d (prohibited practices provision) and Section II.A (flow monitoring provision).

20. On or about June 18, 2008, EPA accepted an invitation to tour the Facility. The purpose of the visit was to allow EPA to see the layout of the Facility and to assist EPA in understanding the standard operating procedures at the Facility. This visit initiated discussions pertaining to the changes needed to be made to bring the Facility into compliance with the Current Permit.

21. Section II.B.2.d of the Current Permit prohibits the discharge of “[a]ny untreated cleaning wastewater....”

22. At the June 18, 2008 inspection, the EPA inspector observed the discharge of untreated cleaning wastewater from System II rearing units at the Facility in violation of Section II.B.2.d of the Current Permit. This constitutes one violation of the Permit.

23. As constructed, System III rearing units routinely discharge untreated cleaning wastewater in violation of Section II.B.2.d of the Current Permit. Between December 2007 and

1 July 2011, every time the Facility discharged untreated cleaning wastewater from the System III
2 rearing units into waters of the U.S., the Facility violated Section II.B.2.d of the Current Permit.

3 24. Section II.C of the Previous Permit and Section V.B of the Current Permit
4 requires USFWS to submit monthly discharge monitoring reports ("DMRs") for the Facility.
5 Between December 2004 and December 2007, the USFWS failed to submit DMRs for the
6 Facility in violation of Section II.C of the Expired Permit and Section V.B of the Current Permit.
7 This constitutes thirty-three (33) violations.

8 25. The violations alleged in Paragraphs 19 to 24 constitute violations of Section
9 402(a) of the CWA, 33 U.S.C. § 1342(a).

10 26. Various operational and infrastructure measures have been taken by USFWS and
11 the Corps to achieve compliance with the above violations. These measures are set forth in
12 Attachment B.

13 27. On May 21, 2010, USFWS and the Corps submitted to EPA a Feasibility Study
14 that identifies the range of options available that will cause the discharges from the Facility to
15 come into compliance with the conditions and requirements set forth in the Current Permit.

16 **COMPLIANCE PROGRAM**

17 28. USFWS and the Corps agree to take any and all necessary steps within their
18 power to comply fully with the Permit. Such steps will include, but not be limited to, the
19 activities outlined in this section.

20 29. By September 30, 2011, the Facility shall have instituted the interim measure of
21 adapting the System III biofilter reuse system ponds into a wastewater treatment system. This is
22 intended to provide treatment to the cleaning wastewater from System III so as to bring that
23 portion of the Facility into compliance with Section II.B.2.d of the Current Permit.

30. Attachment A sets forth a FFCA Compliance Plan that describes four (4) construction phases that are anticipated to correspond with annual congressional appropriations in amounts adequate to complete each phase. If annually appropriated or other funding is adequate to complete construction phases 1-3, the Facility shall achieve full compliance with the conditions and requirements set forth in the Current Permit by December 31, 2016. Construction phase 4 of the FFCA Compliance Plan will achieve additional benefits for the Facility's discharge system by reducing the quantity of effluent discharged and associated operation and maintenance requirements; however, construction phase 4 is beyond what is required to achieve compliance with the conditions and requirements of the Current Permit.

REPORTING

31. Within one year of the effective date of this Agreement and every year thereafter until this Agreement terminates, the Corps and USFWS shall submit a written status report to EPA. The status report shall be submitted in addition to any other reporting or certification required under this Agreement or pursuant to law, regulation, or the Current Permit. The status report shall state and describe the cause of each violation of this Agreement and shall include: (1) the deadlines or other milestones which the Corps and USFWS are required to meet during the reporting period, (2) the progress they made toward meeting the milestones, (3) the reasons for any noncompliance, and (4) a description of any matters relevant to the status of its compliance with this Agreement.

32. Notification to EPA of any noncompliance with any provisions of this Agreement or anticipated delay in performing any obligation under this Agreement shall not excuse the Corps' or USFWS' noncompliance or anticipated delay.

33. Unless specified otherwise, when written notification to or communications with EPA is required by the terms of this Agreement, it shall be addressed as follows:

Chris Gebhardt
US EPA Region 10
NPDES Compliance Unit
1200 Sixth Avenue, Suite 900, MS OCE-133
Seattle, WA 98101
(206) 553-0253

34. Each notification or communication to EPA shall be deemed submitted on the date it is postmarked and shall be sent by certified mail, return receipt requested. The Corps and USFWS shall maintain records of each notification or communication, together with proof of mailing by certified mail, for the duration of this Agreement.

35. Each report submitted pursuant to this Agreement shall be signed under oath by a duly authorized representative of the Corps and USFWS who has knowledge of the report's contents. Each report shall be admissible as evidence in any proceeding to enforce this Agreement.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

36. Compliance with the terms of this Agreement in no way affects or relieves USFWS and/or the Corps of their obligation to comply with all applicable requirements of the CWA, and regulations promulgated thereunder, or other applicable requirements of Federal, state or local law. Nothing in this agreement is intended to alter the Collaborative Management Agreement (December 14, 2009) between the Corps, USFWS and the Tribe.

PERMIT OBLIGATIONS

37. This Agreement does not constitute a permit and does not relieve USFWS of any obligation to comply with the Current Permit for the Facility.

RIGHT OF ENTRY

38. EPA, its contractors, and other authorized representatives shall have the right to enter the Facility to conduct any inspection, including but not limited to record inspection,

1 sampling testing, or monitoring they believe is necessary to determine compliance with this
2 Agreement. This paragraph in no way affects any other right of entry or inspection under
3 Federal or state law.

4 **CONFLICT RESOLUTION**

5 39. In the event of any conflict involving violations of this Agreement, EPA,
6 USFWS, and the Corps shall meet promptly and work in good faith for a period of not less than
7 forty-five (45) days in an effort to reach a mutually agreeable resolution of the dispute. If the
8 differences cannot be resolved by the Parties in a timely manner, a proposed Order may be
9 issued by EPA as appropriate, and the escalation procedures in Sections 1-602, 1-603 and 1-604
10 of Executive Order 12088 shall apply. Additional dispute resolution procedures may also be
11 utilized if mutually agreed upon in writing by all Parties, as part of this Agreement.

12 40. Except as specifically set forth elsewhere in this Agreement, if a dispute arises
13 under this Agreement, the procedures of this Section shall apply. In addition, during the
14 pendency of any dispute, USFWS and the Corps agree that they shall continue to implement
15 those portions of this Agreement that are not in dispute.

16 41. The pendency of any dispute under this Section shall not affect the Corps' and
17 USFWS' responsibility to perform the work required by this Agreement in a timely manner,
18 except that the time period for completion of work affected by such dispute may, at EPA's
19 discretion, be extended for a period of time not to exceed the actual time taken to resolve any
20 good faith dispute in accordance with the procedures specified herein. All elements of the work
21 required by this Agreement which are not affected by the dispute shall continue and be
22 completed in accordance with the applicable schedule.

23 42. The Parties to this Agreement shall make reasonable efforts to informally resolve
24 disputes at the Project Manager or immediate supervisor level. With respect to EPA, "Project
25

1 Manager” means Chris Gebhardt, or any duly identified successor. With respect to the Corps,
2 “Project Manager” means Damian Walter, District Environmental Compliance Officer, or any
3 duly identified successor. With respect to USFWS, “Project Manager” means Larry Peltz or any
4 duly identified successor. If resolution cannot be achieved informally, the procedures of this
5 Section shall be implemented to resolve a dispute.

6 43. Within thirty (30) days after any action which leads to or generates a dispute, the
7 Corps and/or USFWS shall submit to EPA a written statement of dispute setting forth the nature
8 of the dispute, the Corps’ and/or USFWS’ position with respect to the dispute, and the
9 information the Corps and/or USFWS is relying upon to support its position. If USFWS and/or
10 the Corps does not provide such written statement to EPA within this thirty (30) day period,
11 USFWS and/or the Corps shall be deemed to have agreed with EPA’s position with respect to the
12 dispute.

13 44. Upon EPA receipt of the written statement of dispute from USFWS and/or the
14 Corps, the Parties shall engage in dispute resolution among the Project Managers and/or their
15 immediate supervisors. The Parties shall have thirty (30) days from the receipt by EPA of the
16 written statement of dispute to resolve the dispute. During this period, the Project Managers
17 shall meet or confer as many times as necessary to discuss and attempt resolution of the dispute.
18 If agreement cannot be reached on any issue within this thirty (30) day period, the Corps and/or
19 USFWS may, within ten (10) days after the conclusion of the thirty (30) day dispute resolution
20 period, submit a written notice to EPA elevating the dispute to the Dispute Resolution
21 Committee (“DRC”) for resolution. If the Corps and/or USFWS do not elevate the dispute to the
22 DRC within this ten (10) day period, the Corps and/or USFWS shall be deemed to have agreed
23 with EPA’s position with respect to the dispute.

1 45. The DRC will serve as a forum for resolution of disputes for which agreement has
2 not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a
3 dispute to the DRC, the DRC shall have forty-five (45) days to unanimously resolve the dispute.
4 The EPA representative on the DRC is the EPA Region 10 Director of the Office of Compliance
5 and Enforcement. The Corps' designated representative is the Walla Walla District Commander.
6 USFWS' designated representative is the Assistant Regional Director-Fisheries. Delegation of
7 the authority from a Party's representative on the DRC to an alternate shall be provided to the
8 other Parties.

9 46. If unanimous resolution by the DRC is not achieved within this forty-five (45)
10 day period, the Corps and/or USFWS may, within thirty (30) days after the conclusion of the
11 forty-five (45) day dispute resolution period, submit a written Notice of Dispute to the Regional
12 Administrator for final resolution of the dispute. In the event that the dispute is not elevated to
13 the Regional Administrator of EPA within the designated thirty (30) day period, the Corps and/or
14 USFWS shall be deemed to have agreed with the EPA DRC representative's position with
15 respect to the dispute.

16 47. Within sixty (60) days of resolution of a dispute pursuant to the procedures
17 specified in this Section, the Corps and USFWS shall incorporate the resolution and final
18 determination in to the appropriate statement of work, plan, schedule or procedures and proceed
19 to implement this Agreement according to the amended statement of work, plan, schedule or
20 procedures.

21 48. Resolution of a dispute pursuant to this Section of the Agreement constitutes final
22 resolution of any dispute arising under this Agreement. The Parties shall abide by all terms and
23 conditions of any final resolution of dispute obtained pursuant to this Section of the Agreement.

24 **FORCE MAJEURE**

1 49. The Corps' and USFWS' obligations under the Compliance Program Section of
2 this Agreement shall be performed as set forth in this Agreement unless performance is
3 prevented or delayed by a force majeure event. For purposes of this Agreement, "force majeure"
4 is defined as any event arising from causes beyond the Corps' and/or USFWS' control which
5 delays or prevents the performance of any obligation under this Agreement, including without
6 limitation acts of God or war, labor unrest, failure of Congress to appropriate necessary funds,
7 and any judicial orders which prevent compliance with the provisions of this Agreement. Force
8 majeure shall not include increased costs of performance of any activity required by this
9 Agreement or the failure to apply for any required permits or approvals or to provide all
10 information required therefore in a timely manner, nor shall it include the failure of contractors
11 or employees to perform or the avoidable malfunction of equipment.

12 50. If the Corps and USFWS are having difficulty meeting their obligations as set
13 forth in this Agreement due to a force majeure event, they shall notify EPA promptly by
14 telephone of any change in circumstances giving rise to the suspension of performance or the
15 nonperformance of any obligation under this Agreement. In addition, within fourteen (14) days
16 of the occurrence of circumstances causing such difficulty, the Project Managers for the Corps
17 and USFWS shall provide a written statement to EPA of the reason(s), the anticipated duration of
18 the event and delay, the measures taken and to be taken to prevent or minimize the time and
19 effects of failing to perform or delaying any obligation, and the timetable for the implementation
20 of such measures. Failure to comply with the notice provisions shall constitute a waiver of any
21 claims of force majeure. The Corps and USFWS shall adopt all reasonable measures to avoid or
22 minimize any such delay.

23 51. The burden of proving that any delay is caused by circumstances beyond the
24 control of the Corps and/or USFWS shall rest with the Corps and/or USFWS.
25

EXTENSIONS

52. The timetable and deadline under this Agreement may be modified upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Corps and/or USFWS shall be submitted in writing and shall specify: the timetable or deadline for which an extension is sought; the length of the extension sought; the good cause for the extension; and any related timetable and deadline or schedule that would be affected if the extension were granted.

53. Good cause exists for an extension when sought in regard to: a force majeure event; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; a delay caused by failure of a regulatory agency to perform its duties in a timely manner where regulatory action is necessary to proceed with construction and where the Corps and/or USFWS has made a timely and complete request for action from the regulatory agency; and any other event or series of event mutually agreed upon by the Parties as constituting good cause.

54. Within twenty one (21) calendar days of receipt of a request for an extension of a timetable or deadline, EPA shall advise the Corps and USFWS of its position on the request. If EPA does not concur in the extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

FUNDING

55. It is the expectation of the Parties to this Agreement that all obligations of the Corps and USFWS arising under this Agreement will be fully funded. The Corps and USFWS agree to use every available mechanism to seek sufficient funding through the budgetary process to fulfill their obligations under this Agreement.

56. Any requirement for the payment or obligation of funds by the Corps and/or USFWS established by the terms of this Agreement shall be subject to the availability of appropriated funds. Provisions herein shall not be interpreted to require obligations or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this Agreement.

57. If appropriated funds are not available to fulfill the Corps' and USFWS' obligations under this Agreement, EPA reserves any rights it has to initiate an action against any other person, or to take any action which would be appropriate absent this agreement.

GENERAL PROVISIONS

58. The Parties agree that the terms and conditions of this Agreement are enforceable as appropriate by any person pursuant to Section 505 of the CWA, 33 U.S.C. § 1365, to the extent allowed by law. Terms and conditions of this Agreement changed by any agreed upon modification shall be enforceable as changed, to the extent allowed by law. Nothing in this Agreement shall be deemed to waive the sovereign immunity of the United States beyond what is already accomplished in the CWA. Nothing in this Agreement shall be deemed to expose any employee of the Corps or USFWS to civil or criminal liability that would not exist in the absence of this Agreement.

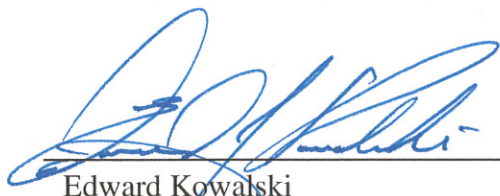
59. This Agreement was negotiated and executed by the Parties in good faith to ensure compliance with the law. No part of this Agreement constitutes or should be interpreted or construed as an admission of fact or of liability under Federal, state or local laws, regulations, ordinances, or common law or as an admission of any violations of any law, regulations, ordinances, or common law. By entering into this Agreement, the Corps and USFWS do not

waive, other than as to the enforcement of this Agreement pursuant to the terms contained herein, any claim, right, or defense that it might raise in any other proceeding or action.

60. This Agreement shall terminate once the Corps and USFWS have met all of their obligations herein, as determined by the mutual consent of the Parties and evidenced in writing.

9/07/2011

DATE



Edward Kowalski
Director
Office of Compliance and Enforcement
US EPA Region 10

DATE

David A. Caldwell
Lieutenant Colonel, Corps of Engineers
District Commander

DATE

Michael Carrier
USFWS Assistant Regional Director-
Fisheries

1 waive, other than as to the enforcement of this Agreement pursuant to the terms contained
2 herein, any claim, right, or defense that it might raise in any other proceeding or action.

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DATE

Edward Kowalski
Director
Office of Compliance and Enforcement
US EPA Region 10

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DATE



David A. Caldwell
Lieutenant Colonel, Corps of Engineers
District Commander

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16 _____
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Michael Carrier
USFWS Assistant Regional Director-
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Edward Kowalski
Director
Office of Compliance and Enforcement
US EPA Region 10

11 _____
12 DATE

David A. Caldwell
Lieutenant Colonel, Corps of Engineers
District Commander

15
16 Aug. 22, 2011
17 DATE

Michael Carrier
Michael Carrier
USFWS Assistant Regional Director-
Fisheries

Attachment A

FFCA Compliance Plan

I. Interim Measure

- a. Set forth in Paragraph 29 of the FFCA.

II. Construction Phase 1

- a. Installation of Vacuum Degassing Towers on Main Aeration Sump;
- b. Finalize Hatchery Strategic Plan Design (Strategic Plan); and,
- c. Finalize integration of CH2MHill NPDES Design, dated June 15, 2011, with the Strategic Plan. The purpose of the integration is to reduce scope and cost of the NPDES project, improve fish health and production, and reduce energy and water consumption to develop a more environmentally sound and sustainable fish hatchery.

III. Construction Phase 2

- a. Convert System 2 to circular tanks with partial reuse to reduce water consumption up to approximately 80% and energy consumption by approximately 60.5% of system 2;
- b. Install covering over System 2; and,
- c. Commence construction of NPDES compliant wastewater treatment screen system for Systems 1, 2, 3, the nursery and incubation. It should be noted that the Chinook Raceway will continue to be out of compliance with the NPDES permit until Chinook are moved to the circular tanks in System 3 at the end of Construction Phase 3 and the raceways are decommissioned. There will be increased operation and maintenance (O&M) on the wastewater screen treatment system until Systems 1 and 3 are converted to circular tanks and flow is reduced.

IV. Construction Phase 3

- a. Convert System 1 to circular tanks with partial reuse to reduce water consumption up to approximately 80% and energy consumption by approximately 60.5% of system 1;
- b. Install covering over System 1;

c. Convert half of System 3 to circular tanks with partial reuse to reduce water consumption up to approximately 40% and energy consumption by approximately 30.25% (only if on reservoir water); and,

d. Install covering over converted portion of System 3. Chinook from the Chinook raceways will now be reared in System 3 and the Chinook raceways will be decommissioned to bring the Facility into compliance with the Current Permit.

V. Construction Phase 4 (Not Required to achieve compliance with Permit)

a. Convert second half of System 3 to circular tanks to increase capability and capacity of fish production with the potential to do partial reuse (if on reservoir water). This conversion would have water and energy reduction costs in comparison to pond rearing energy and water costs.

b. Install covering over converted portion of system 3; and,

c. Convert nursery to partial reuse system to reduce energy consumption by approximately 50%.

VI. Funding

The construction phases identified above are anticipated to coincide with receipt of annual appropriations in amounts adequate to complete such work. If additional appropriated or other funds become available for work at the Facility, the Corps and/or USFWS may accelerate work out of sequence under any construction phase.

Attachment B

Operational and Infrastructure Measures

1. Measures taken to address the discharge of untreated cleaning wastewater to Clearwater River (River) (Section II.B.2.d of the Current Permit)

- a. **History:** There appeared to be confusion as to which standpipe to pull during the cleaning of the Burrow's Ponds in the steelhead rearing units of System I and System II.

Interim Measure: October 2008 training and written Standard Operating Procedures now call for routinely pulling "cleaning" standpipes. A brown painted "C" on the concrete above the cleaning standpipes in Systems I and II now marks which standpipe must be pulled at time of pond cleaning. This procedure diverts cleaning discharge directly to the reuse channels which discharge into the System I and System II media beds. These beds, originally designed as part of water reconditioning for re-use operations, are currently being used as settling basins for cleaning wastewater.

- b. **History:** Supernatant from the digesters which treat water discharged from the System I and Nursery clarifiers historically had been discharged to the River.

Interim measure: Operators questioned this practice and have decided to discharge the supernatant back to the clarifiers allowing supernatant to be treated again prior to discharge back to the River via Outfall 001.

- c. **History:** Cleaning waste from System III rearing units discharged directly to the River.

Interim measure: The Facility has been unable to find a means of treating the wastewater from System III. System III was constructed with only one drain and one standpipe. This results in sending either all water to the River or all water to the reuse system. The media beds cannot handle all of the flow from the 34 Burrow's ponds in this system unless a portion of discharge is passed into the aeration columns and 10 percent of the flow is discharged. In 2008, two Burrow's ponds were modified into "Mixed Cells" and their surfaces were coated. The idea behind the "Mixed Cell" concept is that solids are discharged rapidly, allowing for less breakdown and accumulation. It was an experimental attempt to see if by modifying the rearing units the Hatchery could increase the flow rates, decrease the buildup of solids, and increase the water quality for fish rearing. Although the Facility does not expect this to decrease the total volume of waste discharged to

the River, the Facility believes the constant, more uniform flow will eliminate the buildup of solids and a “slug” of waste being discharged during cleaning operations.

Interim measure: In May 2009, the Corps hired CH2M Hill to conduct a feasibility study and design a waste water treatment system for discharge from these units as well as others throughout the facility.

Interim measure: In May 2011, a proposal was made to divert System III flow-through and cleaning waste to the System III bio-filter beds. The first discharge point of bio-filter bed III was capped off prohibiting discharge to the River, and allowing water to flow over the launderers into the second and third sections of the bio-filter beds. Ponds will be turned on, one at a time, allowing a determination of how many ponds may be diverted to the system without causing an upset and discharge to the River. Initially, clean water will be flushed to the bio-filters. The discharge will then be directed to the digester and then to the settling basin. Once the clean water flows through the bio-filters, discharge water will be sent through the bio-filters to allow the solids to settle out, and then discharged from Outfalls 006 A and B.

- d. **History:** Wastewater from the Chinook raceways was allowed to discharge during cleaning operations.

Interim measure: In October 2008, standard operating procedures were initiated. Flow to the raceways is adjusted to allow water to drop below the level of the dam boards prior to cleaning. “Mud” valves in the Chinook raceways are opened prior to cleaning. When opened, the mud valve allows cleaning waste to be directed to the off-line settling basin rather than to the River. Training, spot checks and education has helped stop the flow of cleaning waste water directly to the River.

Interim measure: In May 2011, diaphragms were installed in the pipes diverting flow through water from A and B banks of the SCS rearing units. The diaphragms are intended to seal off the fish planting line (Outfall 003), thus eliminating one discharge point.

In April 2010, a contract was awarded for removal of solids from the sumps, reuse lines, clarifiers and drains, off-line settling basin and holding ponds. The intent was to remove the solids which allows for more effective disinfection of the rearing units and wastewater treatment systems.

2. Measures taken to address the failure to submit DMRs prior to September 2007 (Section II.C of the Previous Permit)

History: There was a period of time where the Facility did not submit DMRs.

Issue Resolved: One individual has been hired to oversee the NPDES Permit which includes submission of the monthly and quarterly DMRs. The current practice at the Facility is to have all staff familiar with the permitting, sampling and reporting process and have at least one additional person serve as a backup. During the quarterly sampling period the lead is assisted by a second person who shares the responsibility for sampling and is trained in data collection, submission of the chain-of-custody forms, and preparing and submitting the DMRs.

3. Training measures taken

- a. Since there are few training programs on Clean Water Act implementation and permit compliance including preparation and submission of BMPs, QA/QC documents, sampling protocols, and preparation and submission of DMRs, the Facility has participated in trainings that are available and the Facility has initiated several training programs. The majority of Standard Operating Procedures training were provided to production staff (fish culture and cleaning) and maintenance staff (pumps and mechanical operations) in 2009. Staff is trained as new and updated SOPs are prepared. New employees are trained by the fish culture supervisor and biologists when hired.

- b. Training undertaken by staff at the Facility related to the violations

January 2008 to current- Fish Biologists (2-3) receive on-the-job training for Quarterly Discharge Monitoring Reports. This includes locating active discharge pipes, sampling procedures, flow proportioning, sample preparation and storage, completing chain of custody forms, and preparation and submission of quarterly Discharge Monitoring Reports.

June 2008 – Kooskia NFH Hatchery Assistant Manager (Izbicki) and Fish Biologist (Olson) attended an EPA Discharge Monitoring Report Training for Idaho Department of Fish and Game's Hatchery Manager's Workshop in Riggins, Idaho.

February 2, 4, 9, 2010 NetDMR training prepared by EPA DC for regions where electronic submission of DMR is available (Izbicki and Olson).

May 2010 - FWS Region 1 NPDES workshop at Spring Creek NFH in Oregon (Sprague, Olson)

June 18, 2010 - EPA Discharge Monitoring Report Training for Idaho Department of Fish and Game's Hatchery Manager's Workshop in Orofino, Idaho (Sprague, Olson).

August 2010 - Environmental Management Systems awareness training provided for all staff. Last trainee completed on line training 10/13/2010.

September 2010 - Rick King trained production staff on how to activate sump pumps for System 2 to avoid overflow of cleaning channel in System 2 and 3 reuse settling basins.